

TENNESSEE GENERAL ASSEMBLY
FISCAL REVIEW COMMITTEE



FISCAL MEMORANDUM

HB 2390 – SB 2252

February 16, 2012

SUMMARY OF AMENDMENT (013004): Increases the penalty for aggravated assault, robbery, or aggravated burglary, if committed in concert with two or more persons, to one classification higher than if the offense had been committed alone. Defines “acting in concert” as conduct that would make a person criminally responsible for current criminal statutes addressing parties to offenses, criminal responsibility for the conduct of another, and criminal responsibility for facilitation of a felony. Requires the indictment to charge that the offense was committed while acting in concert with two or more persons.

FISCAL IMPACT OF ORIGINAL BILL:

Increase State Expenditures - \$2,850,500/Incarceration*

Funding in the amount of \$4,764,400 is included in the Governor's proposed FY12-13 budget.

FISCAL IMPACT OF BILL WITH PROPOSED AMENDMENT:

Unchanged from the original fiscal note.

Assumptions applied to amendment:

- The Department of Correction (DOC) assumes three percent of admissions for aggravated assault, robbery, and aggravated burglary were committed in concert with two or more people based on information obtained from the Bureau of Justice, Statistics of the U.S. Department of Justice Website. According to the Website, approximately five percent of violent crime victims could determine that the offender(s) were gang members. DOC assumes three percent for Tennessee victims.
- Aggravated assault is punishable as a Class D or Class C felony.
- According to DOC, the average operating cost per offender per day for calendar year 2012 is \$61.36.
- According to DOC, there has been an average of 959 admissions for aggravated assault in each of the past 10 years. DOC assumes 10 percent (96) of those were Class D felonies and 3 percent (3) of those were committed in concert with two or more persons and would be sentenced one classification higher.

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- According to the U.S. Census Bureau, population growth in Tennessee has been 1.12 percent per year for the past 10 years, yielding a projected compound population growth of 11.78 percent over the next 10 years. No significant incarceration cost increase will occur due to population growth in this period.
- According to the Department, 26.7 percent of offenders will re-offend within one year of their release. A recidivism discount of 26.7 percent has been applied to this estimate to account for the impact of offenders who would re-offend under current law within the additional time added by this bill. It is assumed that the re-offender would have committed the subsequent offense at the same felony level as under current law (3 offenders x 26.7% recidivism discount = 1 offender).
- The maximum cost in the tenth year, as required by Tenn. Code Ann. § 9-4-210, is based on two offenders (3-1) serving an additional 1.12 years (2.98 years for a Class C – 1.86 years). The cost per offender at 1.12 years (409.08 days) is \$25,101.15 (\$61.36 x 409.08 days). The additional cost for two offenders is \$50,202.30 (\$25,101.15 x 2).
- Of the remaining 863 offenders (959 admissions – 96 Class D felonies), DOC assumes they committed Class C felonies and three percent (26) of those were committed in concert with two or more persons and would be sentenced on classification higher. Population growth will result in three additional offenders.
- According to the Department, 39.6 percent of offenders will re-offend within two years of their release. A recidivism discount of 39.6 percent has been applied to this estimate to account for the impact of offenders who would re-offend under current law within the additional time added by this bill. It is assumed that the re-offender would have committed the subsequent offense at the same felony level as under current law (29 offenders x 39.6% recidivism discount = 12 offenders). The maximum cost in the tenth year is based on 17 (29-12) offenders serving an additional 2.45 years (5.43 years for a Class B – 2.98 years for a Class C). The cost per offender at 2.45 years (894.86 days) is \$54,908.61 (\$61.36 x 894.86 days). The additional cost for 17 offenders is \$933,446.37 (\$54,908.61 x 17).
- According to DOC, there has been an average of 458 admissions for the Class C felony offense of robbery in each of the past 10 years. DOC assumes three percent (14) of those were committed in concert with two or more persons and would be sentenced one classification higher. Population growth will result in one additional offender.
- A recidivism discount of 39.6 percent has been applied to this estimate to account for the impact of offenders who would re-offend under current law within the additional time added by this bill. It is assumed that the re-offender would have committed the subsequent offense at the same felony level as under current law (15 offenders x 39.6% recidivism discount = 6 offenders). The maximum cost in the tenth year is based on nine (15-6) offenders serving an additional 2.45 years (5.43 years for a Class B – 2.98 years for a Class C). The cost per offender at 2.45 years (894.86 days) is \$54,908.61 (\$61.36 x 894.86 days). The additional cost for nine offenders is \$494,177.49 (\$54,908.61 x 9).
- According to DOC, there has been an average of 1,223 admissions for the Class C felony offense of aggravated burglary in each of the past 10 years. DOC assumes three percent (37) of those were committed in concert with two or more persons and would be sentenced one classification higher. Population growth will result in four additional offenders.

- A recidivism discount of 39.6 percent has been applied to this estimate to account for the impact of offenders who would re-offend under current law within the additional time added by this bill. It is assumed that the re-offender would have committed the subsequent offense at the same felony level as under current law (41 offenders x 39.6% recidivism discount = 16 offenders). The maximum cost in the tenth year is based on 25 (41-16) offenders serving an additional 2.45 years (5.43 years for a Class B – 2.98 years for a Class C). The cost per offender at 2.45 years (894.86 days) is \$54,908.61 (\$61.36 x 894.86 days). The additional cost for 25 offenders is \$1,372,715.25 (\$54,908.61 x 25).
- The total additional operating cost is \$2,850,541.41 (\$50,202.30 + \$933,446.37 + \$494,177.49 + \$1,372,715.25).
- According to the District Attorney Generals Conference (DAGC), enhancing the punishment for crimes of force or violence committed while acting in concert with two or more persons will not impact the caseloads of the DAGC. These cases can be accommodated within existing resources without an increased appropriation or reduced reversion.
- Any impact to the caseloads of state trial courts can be accommodated within existing judicial resources without an increased appropriation or reduced reversion.

**Tennessee Code Annotated, Section 9-4-210, requires that: For any law enacted after July 1, 1986, which results in a net increase in periods of imprisonment in state facilities, there shall be appropriated from recurring revenues the estimated operating cost of such law. The amount appropriated from recurring revenues shall be based upon the highest cost of the next 10 years.*

CERTIFICATION:

The information contained herein is true and correct to the best of my knowledge.



Lucian D. Geise, Executive Director

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